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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 466.

WARNER, BARNES AND COMPANY, LIMITED, APPELLANT.

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

FILED DECEMBER 17, 1904.

(19566.)

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13376—05——1

1 I.—Petition. Filed January 18, 1902.

Import Duties. Philippine Claim No. 1.

In the United States Court of Claims, Term 1901–1902.

WARNER, BARNES & COMPANY, LIMITED, Claimant,
vs.
THE UNITED STATES.
No. 22757.

Warner, Barnes & Company, Limited, by Henry M. Ward, its attorney, for its petition against the United States respectfully shows to the court and alleges as follows:

1. That at all the times hereinafter mentioned from and after September 12th, 1899, the petitioner was and it now is a business corporation, organized and existing under the laws of the Kingdom of Great Britain, and a subject of the King of Great Britain, having an office for the general transaction of its business at No. 25 Broad street, in the borough of Manhattan, city of New York and State of New York, and having another office for the general transaction of its business at the port of Manila, Philippine islands.

2 2. That the name set forth above in the title of this action is the full and true name and style of the petitioner, and this petitioner is the successor in business of the firm of Warner, Barnes & Co. a copartnership organized in England and existing under the laws of the Kingdom of Great Britain, which said firm was, between the 10th day of December 1898 and the 12th day of September, 1899, composed of Edwin H. Warner, Charles I. Barnes, and William R. Anderson, all British subjects. That said firm was, during said period of time engaged in the same business as was this petitioner thereafter, as herein alleged, and on or about the 12th day of September 1899 said firm of Warner Barnes & Co. dissolved and ceased to do business as a partnership and reorganized pursuant to the laws of Great Britain as a corporation, the petitioner herein, under the corporate name of Warner Barnes & Co., Limited. That thereupon said firm transferred all its outstanding business, accounts and claims of every kind to the said corporation and this petitioner is now authorized under the laws of Great Britain to collect and receive all the claims and demands of said firm which were outstanding on the 12th day of September, 1899 and more particularly the claims and demands hereinafter set forth.

3. That on the 10th day of December, 1898, a treaty of peace between the United States of America and the Kingdom of Spain was concluded and signed by their respective plenipotentiaries at Paris, in the French Republic. Said treaty was ratified by the Senate and by the President of the United States on the 6th day of February, 1899, and by her Majesty the Queen Regent of Spain on the 19th day of March, 1899, and ratifications thereof were exchanged in the city of Washington, in the District of Columbia, on the 11th day of

April, 1899, and on the same day the said treaty was proclaimed by the President of the United States.

4. That at the date of the ratification of said treaty, the military and naval forces of the United States had seized, occupied and were in possession of the town and port of Manila, in the island of Luzon. That under and pursuant to the terms of said treaty, the said island of Luzon, being part of the archipelago known as the Philippine islands, was ceded by Spain to the United States and the rightful possession thereof recognized, and such cession was accepted by the United States. That by said treaty Spain promised and agreed that it would evacuate the territory so ceded by it, which it thereupon proceeded to do. That at all times thereafter said island of Luzon, and particularly the said town and port of Manila in said island, have remained in the complete possession of the United States without interference by Spain or by any other power, and the United States has, since the date of the ratification of said treaty, exercised full administrative and legislative authority over said town and port of Manila.

5. That prior to the date of the signing of the said treaty of peace, the President of the United States made and issued a certain executive order, dated at the executive mansion in the city of Washington, July 12th, 1898, and published by the Secretary of War by order of the President, on the 13th day of July, 1898. The said order provided in substance that upon the occupation and possession of any ports and places in the Philippine islands by the forces of the United States, duties and taxes should be levied and collected upon articles imported into the Philippine islands from other countries, and upon articles exported from the Philippine islands to other countries at the rates and in the manner and subject to the regulations set forth and established by the customs tariff and regulations for the Philippine islands thereunto annexed.

Thereafter, by order of the Secretary of War, dated at the War Department, Washington, October 13th, 1898, and known as "Tariff Circular No. 18," it was orderd that the operation of said order of the President of July 12th, 1898, establishing a customs tariff and regulations for ports in the Philippine islands should be suspended until the 10th day of November, 1898, when the same should take effect and be in force, and that until that time the Spanish tariff as theretofore in force should be in force and duties collected thereunder. That in accordance with the last-named order on and after November 10th, 1898, the said tariff and regulations were put in force at the various ports of entry in the Philippine islands, and more particularly at the said port of Manila, in the island of Luzon. That the said customs tariff and regulations so established by the said order of the President, of July 12th, 1898, as modified by certain amendments thereof made by order of the President from time to time, remained in force at all the ports of entry in the Philippine islands, and more particularly at the said port of Manila from on or about the 10th day of November, 1898, until on or about the 15th day of November, 1901. That

during all of that period import duties were collected under the alleged authority of said orders and of said tariff by the military authorities of the United States upon articles imported and brought into the ports of entry in the Philippine islands from the ports in the several States and Territories of the United States, as well as from ports in foreign countries.

6. That said customs tariff and regulations for the Philippine islands provided, among other things, that every vessel on its arrival should be placed under military guard until duly discharged, and that no merchandise should be delivered until after the payment of the proper duties and charges thereon, when an order for the delivery of the merchandise should be issued by the proper military officer, and that any objection to the assessment of the duties must be filed by the importer before payment by him of the same, and that no refund of duties would be made thereafter, and that no delivery of imported merchandise should be made to the importer unless he had duly paid in cash the duties assessed thereon, and that any goods, wares or merchandise not duly entered for
5 payment of duty within ninety days after importation should be sold at auction by order of the commanding officer, and that the proceeds of such sale should be retained for ten days subject to the demand of the importer, after deduction of the proper duties on the goods and all expenses of storage and sale; and that all seized and confiscated goods should be sold in like manner.

The said tariff set forth the rates of duties on imports in certain schedules annexed thereto, and this petitioner begs leave to refer to the said customs tariff and regulations as established by the said orders of the President and to the amendments thereof, and to make the same a part of this petition as fully to all intents and purposes as if herein set forth at large.

7. That during the said period from November 10th, 1898, until November 15th, 1901, certain officers of the United States Army were designated under orders of the President to act, and did act as collectors of customs at the several ports in the Philippine islands, and particularly at the said port of Manila, and enforced the said tariff and regulations and collected duties thereunder at the rates thereby provided upon articles imported and brought into the ports in the Philippine islands, and more particularly the port of Manila from ports in the several States of the United States, at the same rates and in the same manner as upon articles imported from ports in foreign countries.

8. That at all the times herein referred to, before the 12th day of September, 1899, the said firm of Warner, Barnes & Co., and thereafter the petitioner, was and the petitioner now is, engaged in the business of a general commission, mercantile and trading house in the port of Manila and other ports in the Philippine islands, having its home office in the city of London, England, and correspondents in the city of New York, State of New York, and in many of the
6 principal ports in other States of the United States, and in other countries, and in the course of such business the

petitioner has imported a great variety of goods of all kinds from the ports in the several States of the United States, and more particularly the ports of New York and San Francisco, as well as from foreign countries, into the said port of Manila, and up to the 12th day of September, 1899, the said firm of Warner, Barnes & Co., and thereafter and prior to the 15th day of November, 1901, the petitioner, in the course of its business as aforesaid, imported from the ports in certain of the States of the United States, and more particularly from said port of New York, in the State of New York, and from said port of San Francisco, in the State of California, into said port of Manila, in the island of Luzon, certain merchandise and articles the growth, produce or manufacture of certain of the several States.

9. That upon the arrival at the said port of Manila, and at the other ports in the Philippine islands, of such articles, the growth, produce or manufacture of the several States, imported by and consigned to said firm of Warner Barnes & Co., and to the petitioner from the said ports of New York and San Francisco, and from other ports in the several States of the United States, the military officer of the United States then acting as collector of customs, and the subordinate military officers acting under his orders, took possession of such articles and placed them under military guard, in the manner provided for in said customs tariff and regulations and proceeded to assess and levy duties thereon at the rates thereby established, and refused to deliver possession of the same to said firm and to the petitioner until after the payment in cash of the duties so assessed and levied, and threatened in the event of the default in the payment of such duties to seize such goods with the military forces at their command and to sell the same for the payment of the duties, in the manner provided for by said customs tariff and regulations. And the said
7 firm and the petitioner respectively were thereupon obliged to and did pay, under duress, and in order to obtain possession of their goods, and in order to carry on their business as aforesaid, the duties so assessed, and upon such payment the said goods were released from the custody of the military authorities and delivered to the said firm and to the petitioner.

10. That the items of duties so paid by this petitioner to the military authorities at the port of Manila upon articles imported by this petitioner and consigned to it by Flint, Eddy & Company and Flint Eddy & American Trading Company, both of the port of New York, in the State of New York, between the dates of October 10th, 1899, and October 4th, 1901, amounting to seventy eight thousand five hundred and forty one dollars and seventy three cents ($78,541.73) Mexican silver, are set forth in the schedule hereunto annexed, made a part of this petition and marked "Schedule A."

That the items of duties so paid by said firm of Warner, Barnes & Co., and by this petitioner to the military authorities at the port of Manila upon articles consigned to them respectively by other correspondents at the port of New York and other ports in the United States, between the dates of December 13th, 1898, and October 25th,

1901, amounting to eighty-three thousand seven hundred and eleven dollars and fifty-six cents ($83,711.56) Mexican silver, are set forth in the schedule hereunto annexed, made a part of this petition and marked "Schedule B."

11. That after collecting the amounts of duties so assessed and levied upon the imports of said firm of Warner, Barnes & Co., and of this petitioner, the said military officers acting as collectors of customs during the period herein referred to, paid the same over to the United States, and said amounts of money are now in the possession of the United States.

8 12. That by the common law of Great Britain, and by the act of 23 and 24 Victoria, July 3, 1860, citizens of the United States of America have since had and now have the right to institute and prosecute suit in the form of a petition of right against the government of Great Britain for the recovery of money due, or other thing wrongfully withheld, and in such proceedings judgments may be recovered as in other cases according to the nature and extent of the relief to which the suitor is entitled at law or in equity.

13. That as the petitioner is advised by counsel, the proper construction of the said order of the President of July 12th, 1898, and of the customs tariff and regulations thereby established, as amended from time to time, is that they ceased to apply to all articles imported and brought into the several ports in the Philippine islands, and more particularly the port of Manila from ports in the several States of the United States, at the moment the United States ceased to be a foreign country with respect to the Philippine islands: that is to say, on December the 10th, 1898, the date when the said treaty of peace was signed. And that all the articles and produce so imported by the petitioner at said port of Manila, as specified in the annexed schedules marked respectively "A," and "B," were not subject to any import duties, and were entitled to free entry into the said port of Manila.

14. That as the petitioner is advised by counsel, the imposition and collection of said duties upon imports, from said firm of Warner, Barnes & Co. and from this petitioner at the port of Manila as aforesaid, in the amounts set forth in the schedules hereto annexed and marked respectively "A," and "B," were in violation of the rights and privileges secured to the petitioner as a subject of the King of Great Britain, under and by virtue of the provisions of the Constitution of the United States and of the treaties between the United States and the Kingdom

9 of Great Britain, and the laws of the United States, and that the collection of such import duties by the military authorities as aforesaid in the amounts specified in said schedules, or in any other amount, is unauthorized, illegal and in violation of the laws and Constitution of the United States and the treaties between the United States and Great Britain, and the petitioner claims that it is entitled to recover said moneys from the United States, and bases it claim thereto upon the United States Constitution and the said treaties and the laws of the United States.

15. That no part of the moneys so paid by the petitioner to the United States as aforesaid has ever been repaid to it by the United States, although payment thereof has been demanded. And by reason of the facts aforesaid the sum of one hundred and sixty-two thousand two hundred and fifty-three dollars and twenty-nine cents ($162,253.29) in Mexican silver so paid by said firm of Warner, Barnes & Co. and by the petitioner to the United States, or its equivalent, is now due to and owing the petitioner from the United States.

Wherefore, the petitioner demands judgment against the United States for a sum of money in United States currency equal to $162,253.29 in Mexican silver, and all proper relief in the premises.

HENRY M. WARD,
Attorney of Record for Claimant,
30 Broad Street, New York City.

10 STATE OF NEW YORK, }
County of New York, } ss:

Alfred De Buys, being duly sworn, deposes and says: I am an officer, to wit, vice president of Flint Eddy & American Trading Company, a Maine corporation, having its office and place of business at No. 25 Broad street, city of New York, State of New York, which corporation is the agent and correspondent in New York of Warner, Barnes & Company, Limited, the petitioner herein. I am familiar with the details of the petitioner's business above referred to. The greater part of said business was carried on in a large part by said Flint Eddy & American Trading Company, and the same was under my supervision. To the best of my knowledge, information and belief all the facts stated in the petition are true. No assignment or transfer of said claim or any part thereof, or interest therein has been made, and I believe the claimant is rightfully and justly entitled to the full amount named and stated in the said petition, after allowing all just credits and set-offs, if any.

The reason why this affidavit is made by me is that none of the directors or officers of the petitioner is at present within the State of New York, or the District of Columbia, and the only one of the directors or officers of the petitioner who is within any of the organized States or Territories of the United States, other than the Philippine islands, is Edwin H. Warner, who is now in the Territory of Arizona under medical treatment.

ALFRED DE BUYS.

Subscribed and sworn to before me this 17th day of January, 1902.

RALPH KIRBY,
[NOTARIAL SEAL.] Notary Public, Nassau County.

Certificate filed in New York county.

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SCHEDULE A.

Summary of Duties Paid Flint, Eddy & Co. Import Account.

No. of declaration.	Vessel.	Origin.	Date of payment of duties.	Import duties.	Fines & penalties.	Storage.	Total.
			1899.				
7	Afghanistan	U. S. A.	Oct. 10th	$172.32	.....	.....	$172.32
69	Yuensang ..	do.	Nov. 24th	535.54	.....	.....	535.54
				$707.86	.....	.....	$707.86
			1900.				
1	Saint Bede..	do.	Feb. 9th	429.10	.....	.....	429.10
11	Afghanistan	do.	do. 9th	8.70	$1.45	.....	10.15
30	Diamante...	do.	do. 9th	20.20	.....	.....	20.20
2	Loostaaken .	do.	do. 21st	97.13	...	.....	97.13
3039	Diamante...	do.	May 18th	559.87	.....	.....	559.87
3219	Arlandearg.	do.	do. 19th	805.60	.....	.....	805.60
3215	do.	do.	do. 20th	271.59	.....	$3.32	274.91
2865 2868 2870	Armenia....	do.	do. 19th	1804.75	.....	.....	1804.75
3376	Palitana	do.	do. 31st	803.92	.....	.....	803.92
3709	Menmuir ...	do.	June 1st	3.02	.....	.....	3.02
4977	do.	do.	do. 13th	38.93	.....	.....	38.93
5108	Albenga	do.	do. 18th	391.33	.....	.....	391.33
5109	do.	do.	do. 22nd	1293.44	64.67	.....	1358.11
5370 5371	Diamante...	do.	do. 29th	147.90	7.40	.....	155.30
6416	Menmuir ...	do.	July 5th	42.34	6.16	.....	48.50
5570	Kurdistan ..	do.	do. 5th	241.97	.....	.....	241.97
6074	Indravelli ..	do.	do. 17th	1767.71	.....	.....	1767.71
6484	R. Castle ...	do.	Aug. 2nd	176.90	.....	4.25	181.15
6486	do.	do.	do. 9th	1206.03	.....	60.00	1266.03
B. 219 B. 220	Brand.....	do.	do. 23rd	4670.18	.....	.....	4670.18
B1616a	Saint Bede..	do.	Sept. 17th	4288.46	.....	.....	4288.46
B1615	do.	do.	do. 17th	149.39	.....	.....	149.49
B1632	do.	do.	do. 20th	752.03	.....	.....	752.03
B1624	do.	do.	do. 20th	240.26	.....	.....	240.26
B1625	do.	do.	do. 24th	65.49	.....	.....	65.49
	Carried forward			$20276.24	$79.68	$67.57	$20423.49
12	Brought forward			$20276.24	$79.68	$67.57	$20423.49
B-1633	Saint Bede..	U. S. A.	Sept. 24	745.45	.....	.....	745.45
B-1627	do.	do.	do. 25	88.43	.....	.....	88.43
B-1629	do.	do.	do. 26	361.65	18.08	.....	379.73
B-1634	do.	do.	do. 25	458.94	.....	.....	458.94
B-1630	do.	do.	do. 28	177.27	.....	.....	177.27
B-1628	do.	do.	do. 28	28.62	.....	.....	28.62
B-1636	do.	do.	Oct. 3	40.51	.....	3.93	44.44
B-1623	do.	do.	do. 3	31.31	.....	1.25	32.56
B-1618/22 B-1626 B-1635	do.	do.	do. 4	339.44	.....	.....	339.44
B-1631	do.	do.	do. 5	3791.54	.....	22.29	3813.83
B-1614 B-1616 B	do.	do.	do. 10	1769.72	.....	64.42	1834.14
B-2436	Yuensang ..	do.	do. 6	180.00	.....	2.21	182.21
B-4567	Glenturret..	do.	do. 23	4288.45	.....	.....	4288.45
B-4568	do.	do.	do. 23	637.34	.....	.....	637.34
B-4566	do.	do.	do. 24	2520.32	.....	.....	2520.32

SCHEDULE A—Continued.

No. of declaration.	Vessel.	Origin.	Date of payment of duties.	Import duties.	Fines & penalties.	Storage.	Total.
B–4560	Glenturret..	U. S. A.	Nov. 1	114.44	35.64	.....	150.08
B–4577	do.	do.	do. 1	44.35	.....	.....	44.35
B–4578	do.	do.	do. 1	6.72	.....	.....	6.72
B–4558	do.	do.	do. 1	164.16	.....	.....	164.16
B–4559	do.	do.	do. 1	505.68	.....	.....	505 68
B–4557	do.	do.	do. 1	40.04	.....	.....	40.04
B–4555	do.	do.	do. 1	433.88	.....	.....	433.88
B–4576	do.	do.	do. 1	536.65	.....	.....	536.65
B–4569	do.	do.	do. 1	95.00	.....	.....	95.00
B–4556	do.	do.	do. 3	1692.63	.....	.....	1692.63
B–4579	do.	do.	do. 8	294.60	131.25	.....	425.85
B–4575	do.	do.	do. 8	250.59	.....	.....	250.59
B–4554	do.	do.	do. 14	339.10	.....	.....	339.10
B–4573	do.	do.	do. 16	226.08	5.20	.....	231.28
13	Carried for ward ..		.....	$40479.15	$269.85	$161.67	$40910.67
	Brought for ward ..		.....	$40479.15	$269.85	$161.67	$40910.67
B–5825/6/8 B–5804/6 B–5788 B–5793/5	Glenartney .	U. S. A.	1900. Nov. 23	244.97	.....	.....	244.97
B–5784 B–5792 B–5809	do.	do.	do. 14	332.18	.....	.....	332.18
B–5802	do.	do.	do. 13	98.36	.....	.....	98.36
B–5827	do.	do.	do. 13	67.23	.....	.....	67.23
B–5822	do.	do.	do. 12	346.56	.....	.....	346.56
B–5817	do.	do.	do. 12	524.45	.....	.....	524.45
B–5810	do.	do.	do. 3	2144.33	.....	.....	2144.33
B–5803	do.	do.	do. 3	510.21	.....	.....	510.21
B–1013	Rokeby	do.	Nov. 17	231.45	136.99	.....	363.44
B–7897	Diamante ..	do.	Dec. 4	389.40	.....	.....	389.40
B–8031	Perla.....	do.	do. 4	7.80	.....	.....	7.80
B–9568	Folmina	do.	do. 29	282.61	.....	.....	282.61
B–9539	do.	do.	do. 29	351.62	.....	.....	351.62
B–9538	do.	do.	do. 29	667.19	.....	.....	667.19
B–9575	do.	do.	do. 29	168.84	.....	.....	168.84
B–9540	do.	do.	do. 29	235.62	.....	.....	235.62
B–9565	do.	do.	1901. Jan. 7	471.15	.....	.....	471.15
B–9567	do.	do.	do. 9	406.57	.....	.....	406.57
B–9573	do.	do.	do. 9	220.62	.....	.....	220.62
B–9537	do.	do.	do. 9	1752.41	.....	.....	1752.41
B–9562	do.	do.	do. 11	208.10	.....	.....	208.10
C–350	Gymerle ...	do.	do. 28	13.08	.....	.....	13.08
C–355	do.	do.	do. 28	797.24	.....	.....	797.24
C–342	do.	do.	do. 28	288.97	.....	.....	288.97
C–343 C–344 C–345–356 C–346	do.	do.	do. 28	2195.64	.....	.....	2195.64
C–348	do.	do.	do. 28	24.33	.....	.....	24.33
C–1957 C–1958 C–1948 C–1954	R. Castle ...	do.	Feb. 13	165.92	.....	.....	165.92
C–1951	do.	do.	do. 13	237.42	.....	.....	237.42
	Carried for ward ..		.....	$53863.42	$406.84	$161.67	$54431.93

SCHEDULE A—Continued.

No. of declaration.	Vessel.	Origin.	Date of payment of duties.	Import duties.	Fines & penalties.	Storage.	Total.
14	Brought forward	.....	.....	$53863.42	$406.84	$161.67	$54431.93
			1901.				
C-1951	R. Castle ...	U. S. A.	Feb. 13	237.42	.....	.....	237.42
C-1962	do.	do.	do. 13	395.56	.....	.....	395.56
C-1960	do.	do.	do. 15	519.63	.....	.....	519.63
C-1959	do.	do.	March 8	7.56	.....	.19	7.75
C-1963							
C-4160	Glenesk	do.	do. 21	2679.62	.....	.....	2679.62
C-4155	do.	do.	April 1	135.77	.....	.....	135.77
C-4149	do.	do.	do. 1	174.97	.....	.....	174.97
*							
C-4157	do.	do.	do. 10	69.29	.....	.....	69.29
C-6970	L. Castle....	do.	do. 26	187.13	.....	.....	187.13
C-6968							
C-6972	do.	do.	May 2	1804.78	.....	.....	1804.78
C-7902							
C-7907	Glengarry ..	do.	do. 8	568.98	.....	.....	568.98
C-7901	do.	do.	do. 8	51.51	.....	.....	51.51
C-7908							
C-7905	do.	do.	do. 8	226.38	.....	.....	226.38
D-161	Coulsdon ...	do.	do. 27	608.86	.....	.....	608.86
D-28	Perla.....	do.	June 8	2138.88	.....	.....	2138.88
D-155	Coulsdon ...	do.	do. 11	11.22	.....	.....	11.22
D-157	do.	do.	do. 11	57.14	.....	.....	57.14
D-154	do.	do.	do. 11	1744.82	.....	.....	1744.82
C-9230	Esmeralda..	do.	May 24	6045.36	302.27	.....	6347.63
D-2892							
D-2893	Puritan.....	do.	July 18	1574.60	.....	.....	1574.60
D-2894							
D-2893-a	do.	do.	do. 18	214.22	.....	.....	214.22
D-2891	do.	do.	do. 18	27.42	.....	.....	27.42
D-3789-2	Aragonia ...	do.	Aug. 14	509.58	.....	.....	509.58
D-3790	do.	do.	do. 17	271.41	57.35	.....	328.76
D-3791							
D-7909	Algoa	do.	Sept. 25	468.29	.....	1.94	470.23
D-6157	Longships ..	do.	do. 17	601.26	.....	.....	601.26
D-6160	do.	do.	do. 17	42.87	.....	.....	42.87
D-6159	do.	do.	do. 17	71.27	.....	.....	71.27
D-6163							
D-6164							
D-6165	do.	do.	do. 17	115.85	.....	.....	115.85
D-6166							
D-6167							
	Carried forward	.....	.....	$75425.07	$766.46	$163.80	$76355.33
15	Brought forward	.....	.....	$75425.07	$766.46	$163.80	$76355.33
			1901.				
D-6156	Longships ..	U. S. A.	Sept. 17	460.72	.....	.....	460.72
D-8278	Perla.....	do.	Oct. 4	279.22	.....	.05	279.27
D-9360							
D-9361	Claverdale..	do.	do. 9	426.97	.....	3.23	430.20
D-9362							
D-9364							
D-9365	do.	do.	do. 9	174.65	.....	3.36	178.01
C-4156	Glenesk	do.	April 4	130.34	.....	.....	130.34
	Duties 1899	.....	.....	707.86	.....	.....	707.86
				$77604.83	$766.46	$170.44	$78541.73

*C-4156 omitted. See page 5, last item.

16 SCHEDULE B.

Summary of Duties Paid Warner, Barnes & Co., Ltd., Import %.

No. of dec.	Vessel.	Origin.	Date of payment.	Import duty.	Fines and penalties.	Storage.	Total.
33	Esmeralda .	U. S. A.	Dec. 13, 1898	738.76	.....	.....	738.76
8	Tailee	do.	do. 22, "	3693.80	.....	.....	3693.80
49	do.	do.	Jan. 11, 1899	1.48	.....	.....	1.48
14	Yuensang..	do.	Mar. 1, "	5171.32	.....	.....	5171.32
52	do.	do.	do. 4, "	1.77	0.31	.....	2.08
16	Tailee	do.	do. 7, "	6074.08	.....	.....	6074.08
27	Esmeralda .	do.	do. 8, "	456.56	.....	.....	456.56
13	do.	do.	do. 23, "	101.20	.....	.....	101.20
24	do.	do.	Apr. 7, "	3690.11	.....	.....	3690.11
42	do.	do.	May 9, "	445.85	.....	.....	445.85
93	Diamante ..	do.	June 13, "	424.58	.....	.....	424.58
12	Esmeralda .	do.	Aug. 17, "	2259.16	.....	.....	2259.16
13	do.	do.	do. 17, "	754.67	.....	.....	754.67
19	Diamante ..	do.	Sep. 15, "	3013.54	.....	.....	3013.54
18	do.	do.	do. 15, "	751.41	.....	.....	751.41
14	Esmeralda .	do.	do. 29, "	515.44	.....	.....	515.44
41	Yuensang..	do.	Oct. 5, "	24.82	.....	.....	24.82
31	Nanyang...	do.	Nov. 3, "	1502.22	.....	.....	1502.22
2	Afridi	do.	Dec. 5, "	650.81	.....	.....	650.81
5	Nanchang..	do.	do. 9, "	758.81	.....	.....	758.81
6	Diamante ..	do.	Feb. 22, 1900	6004.66	.....	.....	6004.66
52	do.	do.	Mar. 13, "	1502.84	.....	.....	1502.84
3619	Menmuir ..	do.	do. 25, "	2911.07	.....	.....	2911.07
	Carried for	ward..	.....	.....	.....	.....	.....
17							
	Brought for	ward..	.....	.....	.....	.....	.....
5564	Kurdistan..	U. S. A.	July 5, 1900	643.66	.....	.....	643.66
5188	Diamante ..	do.	do. 5, "	7.56	.....	.....	7.56
B1023	Menuir	do.	Aug. 28, "	2252.36	.....	.....	2252.36
B3761	Yuensang..	do.	Oct. 1, "	2265.89	.....	.....	2265.89
B6270	Menmuir ..	do.	Nov. 6, "	2248.30	.....	.....	2248.30
B6782	Loonsang ..	do.	do. 15, "	1498.87	.....	.....	1498.87
B9281	Perla	do.	Dec. 11, "	1498.87	.....	.....	1498.87
B9621	Esmeralda .	do.	do. 18, "	749.43	.....	.....	749.43
B10480	do.	do.	Jan. 3, 1901	1498.87	.....	.....	1498.87
C457	Sungkiang .	do.	do. 16, "	1498.87	.....	.....	1498.87
C1348	Yuengsang.	do.	do. 19, "	749.43	.....	.....	749.43
C1815	Perla	do.	do. 30, "	2991.71	.....	.....	2991.71
C3112	do.	do.	Feb. 14, "	1124.13	.....	.....	1124.13
C5068	do.	do.	Mar. 23, "	2248.30	.....	.....	2248.30
C5941	Esmeralda .	do.	Apr. 9, "	2997.73	.....	.....	2997.73
C8876	Pitcairn ...	do.	May 9, "	6746.90	.....	.....	6746.90
D4864	Loonsang ..	do.	July 31, "	374.70	.....	.....	374.70
D5798	Perla	do.	Aug. 17, "	374.70	.....	.....	374.70
D7910	Algoa.....	do.	" 10, "	8993.14	.....	.....	8993.14
E284	Esmeralda .	do.	Oct. 25, "	1498.87	.....	.....	1498.87
							$83711.56

18 II.—General Traverse. Filed April 12, 1904.

And now comes the Attorney General, on behalf of the United States, and answering the petition of the claimants herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

L. A. PRADT,
Assistant Attorney General.
W.

19 III.—Argument and Submission.

This cause was argued on April 13 and 14, 1904, and submitted.

20 IV.—Findings of Fact and Conclusions of Law. Filed May 5, 1904.

This case having been heard by the Court of Claims, the court, upon the evidence, makes the following

Findings of Fact.

I.

The claimant above named, Warner, Barnes & Company (Limited), is a business corporation organized on September 12, 1899, under the laws of the Kingdom of Great Britain and now existing thereunder, and a subject of the King of Great Britain, and at the time of the filing of the petition herein had an office for the general transaction of its business in the borough of Manhattan, city of New York and State of New York, and another office for the general transaction of its business then and at all the times hereinafter mentioned at the port of Manila, Philippine islands.

II.

The claimant is the successor in business of the firm of Warner, Barnes & Co., a copartnership organized in England under the laws of the Kingdom of Great Britain, which said firm was, between the 10th day of December, 1898, and the 12th day of September, 1899, composed of Edwin H. Warner, Charles I. Barnes, and William R. Anderson, all British subjects. On or about said 12th day of September, 1899, the said firm dissolved and ceased to do business as a partnership and reorganized under the laws of Great Britain as a business corporation, the claimant herein, and thereupon all the outstanding business, accounts, and claims of all kinds belonging to said firm were transferred by operation of law under the laws of Great Britain to the claimant, and the claimant is now, under such laws, authorized to collect and receive all the claims and demands of said firm which were outstanding on the 12th day of September, 1899, and more particularly the claims and demands for duties paid

prior to September 12, 1899, embraced in the schedule annexed to the petition.

21 III.

The business in which said firm prior to September 12, 1899, and the claimant thereafter, were engaged is that of a general commission, mercantile, and trading house in the port of Manila and other ports in the Philippine islands. In the course of such business the said firm and the claimant imported a great variety of goods of all kinds from the ports in the several States of the United States, and more particularly the ports of New York and San Francisco, as well as from foreign countries, into the said port of Manila; and in the course of such business the said firm and the claimant imported on various dates between the 11th day of April, 1899, and the 10th day of November, 1901, a large quantity of merchandise and articles the growth, produce, or manufacture of the several States of the Union.

IV.

On the 10th day of December, 1898, a treaty of peace between the United States of America and the Kingdom of Spain was concluded and signed by their respective plenipotentiaries at Paris, in the French Republic. Said treaty was ratified by the Senate and by the President of the United States on the 6th day of February, 1899, and by Her Majesty the Queen Regent of Spain on the 19th day of March, 1899, and ratifications thereof were exchanged in the city of Washington, in the District of Columbia, on the 11th day of April, 1899, and on the same day the said treaty was proclaimed by the President of the United States.

V.

During the existence of the war with Spain the President of the United States issued the following order:

"EXECUTIVE MANSION, July 12, 1898.

"By virtue of the authority vested in me as Commander in Chief of the Army and Navy of the United States of America, I do hereby order and direct that upon the occupation and possession of any ports and places in the Philippine islands by the forces of the United States, the following tariff of duties and taxes, to be levied and collected as a military contribution, and regulations for the administration thereof, shall take effect and be in force in the ports and places so occupied. Questions arising under the said tariff and regulations shall be decided by the general in command of the United States forces in those islands. Necessary and authorized expenses for the administration of said tariff and regulations shall be paid from the collections thereunder. Accurate accounts of collections and expenditures shall be kept and rendered to the Secretary of War.

"WILLIAM McKINLEY."

This order war published by the Secretary of War on the 13th day of July, 1898. By order of the Secretary of War, dated October 13, 1898, known as tariff circular No. 18, it was ordered that the operation of said order of the President of July 12, 1898, should be suspended until the 10th day of November, 1898, when the same should take effect and
22 be in force, and that until that time the Spanish tariff which was theretofore in force should be enforced and collected thereunder. On or about the 15th day of November, 1898, the said order of July 12, 1898, was again put in force, pursuant to the order of the President, and continued thereafter in force, except as modified by certain amendments thereof made by order of the President from time to time, at all ports of entry in the Philippine islands until March 8, 1902, and during the continuance of the Philippine insurrection. This order was so promulgated and enforced by the President of the United States, by virtue of his authority as Commander in Chief of the Army and Navy of the United States during the continuance of the Philippine insurrection, as a war measure made necessary by the state of war existing in said islands as a result of said insurrection; and the consequent duties upon exports from and imports into the various ports of the Philippine islands, including the ports of Manila and Iloilo, were exacted and collected as a condition of the privilege of such exportations and importations and as military contributions to the support and maintenance of the military government then organized and enforced in said islands. The revenues thus derived went into the military chest or treasury of said military government in the Philippine islands, and were applied by said military government toward paying the expenses of said government in prosecuting the war against the insurgents and in maintaining and carrying on said government. None of the revenues so collected, including the duties herein claimed for, were ever paid into the Treasury of the United States or subject to the jurisdiction of any official of the Treasury Department of the United States.

VI.

The duties which are the subject of this claim were not levied nor collected pursuant to the general statutes of the United States relating to the customs administration, nor by virtue of the authority of any general tariff law of the United States, nor in the exercise of the civil powers of government of the United States, but were collected solely as a military contribution, exacted by the military government of the Philippine islands, and as a condition attached to the privilege of importing the goods upon which said duties were levied and collected into the Philippine islands, all by virtue of and pursuant to the executive order of July 12, 1898, above set forth, and the amendments thereto, and during the time when the cities of Manila and Iloilo, at which said duties were levied and collected, were in the military occupancy of the forces of the United States, as an incident to the war then existing in the Philippine islands.

VII.

The firm of Warner, Barnes & Co., between December 10, 1898, and September 12, 1899, and the claimant between September 12, 1899, and November 15, 1901, in the ordinary course of their business, brought certain articles of merchandise, the growth, produce, or manufacture of the several States, into the port of Manila from the ports of San Francisco, in the State of California, and of New York, in the State of New York.

23 VIII.

Upon the arrival of vessels at the port of Manila containing such articles of merchandise the military officer of the United States, then acting as collector of customs at that port, placed said vessels under military guard until they should be duly discharged, and no delivery of imported merchandise from such vessels was permitted to be made in said port of Manila to the importer until the duties assessed thereon had been duly paid. The said collector, upon the arrival of vessels containing such imported merchandise, preliminary to the assessment and payment of customs duties thereon, required the importer to enter said merchandise for payment of duty at the custom house within ninety days after importation. In this case it appears these regulations were conformed to.

IX.

The amount of duties so assessed and levied upon such articles of merchandise and so collected by the military collectors from the firm of Warner, Barnes & Co. between December 10, 1898, and April 11, 1899, is the sum of $9,964.69.

X.

The amount of duties so assessed and levied upon such articles of merchandise and so collected by the military collectors from the firm of Warner, Barnes & Co. and the claimant between April 11, 1899, and November 15, 1901, is the sum of $71,161.95.

XI.

Prior to the commencement on April 21, 1898, of the war between the United States and Spain, the long-continued disaffection of the native inhabitants of the Philippine islands against the Spanish rule had resulted in a revolution against the Spanish government in the island of Luzon, beginning in August, 1896. A condition of warfare resulted between the insurgents and the forces of the Spanish government, in which many thousand soldiers of the regular army of Spain were employed.

In May, 1897, the revolutionists proclaimed and endeavored to establish a Philippine republic, with Emilio Aguinaldo as president. In December, 1897, a treaty of peace was entered into between the

Spanish authorities in the Philippine islands and Aguinaldo, representing the insurgents in his capacity as such president, pursuant to which Aguinaldo and other leaders of the insurgents left the islands, and were in Hongkong, China, at the time that the crisis in the relations between the United States and Spain at the opening of the year 1898 was approaching. In February, 1898, hostilities had been renewed by the insurgents in the Philippines, who alleged that the provisions of the treaty of 1897 had been violated by the Spanish authorities, and a state of warfare then existed in the vicinity of Manila, with the rebel army a few miles from the city.

This state of affairs prevailed at the time of the declaration of war between the United States and Spain, and continued thereafter with increasing vigor up to and beyond the time of the suspension of hostilities which preceded the treaty of peace of Paris. Meanwhile Aguinaldo had returned to the Philippine islands and resumed
24 his leadership of the insurrectionary movement. In furtherance of this movement, a political organization was formulated for the administration of the affairs of civil government, and on June 18, 1898, Aguinaldo issued a proclamation establishing a dictatorial government. The government thus formed extended its operations throughout the archipelago, but more especially the islands of Luzon and Panay, and proceeded to displace the Spanish civil officials and usurp their official places and power. It induced and compelled general recognition of its authority and jurisdiction by the inhabitants of the territory outside of Manila, gathered together and organized large and formidable armies of insurgents, captured or expelled Spanish garrisons at various places throughout the islands, seized their arms and military equipment, and occupied their military works and defenses.

In September or October, 1898, the dictatorial government proclaimed and established by Aguinaldo assumed political form for emancipation from Spanish rule, and the feeling among the Filipinos was intense and general in its favor. The insurrectionary government thus formed made repeated demands for recognition on various officers of the United States forces then in the Philippine islands, which demands were refused.

At the time of the signing of the protocol at Washington, on August 12, 1898, an insurgent army, under command of Aguinaldo, closely invested the city of Manila, and at the time of the surrender of that city asked to be allowed to hold possession of the same from that time until the ratification of the treaty of Paris. This request was denied. In consequence of this denial and of the refusal of the officers of the United States to recognize the insurgent government and its alleged authority, there was much friction between the insurgent forces and the forces of the United States, and very pronounced unwillingness to submit to the authority of the United States was manifested by the insurgents.

This feeling on the part of the insurgents gradually grew into a strong sentiment of distrust of and animosity toward the United States Government, based upon the apprehension that the United

States Government would not, after the treaty of peace with Spain was ratified, recognize nor permit the independence of the Filipinos, and as a result the whole force of the movement which had been directed against Spain for the purpose of obtaining the independence of the Filipinos began to assume the same relations toward the United States Government for the same purpose.

This situation culminated in a declaration of war against the United States by Aguinaldo in behalf of the Filipino republic on February 4, 1899, and on the same day a battle took place between the army of the insurgents and the United States forces in Manila, resulting from an attack made by the insurgent forces, which attack had for its purpose the conquering and expulsion of the military forces and sovereignty of the United States from Manila and also from the Philippine islands. This attack was renewed by the insurgents on February 6, 1899, and again on February 10, 1899, with the same purpose in view. On February 22, 1899, a concerted uprising of the adherents of the insurrection in Manila was attempted, under instructions from officers of the Filipino government, to massacre all the Americans and Europeans in that city.

At the time of this commencement of hostilities between the forces of the insurgents and the United States forces, the army of the insurgents about and within the neighborhood of Manila numbered between 25,000 and 30,000, and was quite efficiently organized after the Spanish fashion, and the total forces of the insurgents at the time throughout Luzon were between 50,000 and 60,000. These forces the insurgents were in position to keep recruited to full strength on very short notice and without limit. The result of the hostilities thus commenced was a state of warfare throughout the Philippine islands, and especially in the island of Luzon and the island of Panay, which called into action in said islands the troops of the United States to the total number of 126,468 between February 4, 1899, and July 4, 1902. The number of troops engaged in military operations against the forces of the insurgents during that time and at different periods was as follows: In 1898, 22,073; in 1899, 29,722; in 1900, 69,420; in 1901, 67,393; in January, 1902, 36,944. The number of engagements between the respective forces during the continuance of said insurrection and consequent warfare was in 1899, 538; in 1900, 1,150; in 1901, 656; a total of 2,744. This warfare was carried on on the part of the insurgents through operations of various armies until November, 1899, when the plan was changed to a guerrilla warfare, and so continued until its close. This guerrilla warfare required more troops on the part of the United States from 1900 on than prior to that time, and necessitated the occupancy of a large number of garrisoned posts or stations throughout the Philippine islands by the United States forces, reaching the number of between 500 and 600. The number of deaths among the United States troops in the Philippine islands during this period from all causes was 4,374, and the number wounded in action was 3,022.

At the time of the armed insurrection above set forth, and the resulting warfare in the Philippine islands, there was a very general

sympathy on the part of the masses of the Filipinos, especially in the islands of Luzon and Panay, in favor of the insurrection and in support of the insurgent government, and at the time the Filipino government had sway throughout Luzon, throughout the Visayan islands, except Negros, and in northern Mindanao, and after February 4, 1899, the whole force of the movement which had been directed against Spain was directed against the United States. This sentiment of sympathy with and support of the insurrectionary movement was very strong in Manila, which was the center of activity upon the part of the insurgent leaders in the way of encouraging and aiding the insurrection. One form of aid of the insurrectionary movement and government was a contraband trade between merchants and traders in Manila, and the insurgents outside, in the course of which contributions were levied upon such trade by the officers of the insurgent government and paid by the agents of such traders. The general diffusion of this insurrectionary movement and of the sympathy of the Filipino people with the same, and their support thereof, continued practically undiminished and unaffected, even after the United States forces had taken possession of over 500 posts or stations throughout the islands. The result of this insurrectionary movement and the armed hostilities against the United States in the Philippine islands growing out of the same, as above described, was a state of war throughout the Philippine islands, which continued until July 4, 1902, when the same was officially declared to be at an end. During this time said islands were hostile territory.

26 XII.

The city of Manila was captured by the forces of the United States on August 13, 1898, and thereafter was held in military occupancy by the United States forces as an incident of the war with Spain until the treaty of peace at Paris concluded that war, and from that time as an incident of the insurrectionary war in the Philippine islands against the United States until the conclusion of the same. During the whole of the period of said insurrectionary war Manila was the base of the military operations of the United States troops in the island of Luzon and of supply for the maintenance of the military forces of the United States in the Philippine islands.

On February 11, 1899, as the result of a hostile engagement with an armed force of insurgents in the possession of the city of Iloilo, in the island of Panay, that city was captured by the military forces of the United States, and was thereafter, and until July 4, 1902, held in military occupancy by the forces of the United States as an incident of the insurrectionary warfare prevailing throughout the Philippine islands against the Government of the United States, and was the base of the military operations of the United States troops in said island of Panay, and of supply for said forces.

On the military occupancy of the city of Manila being established, an organization for the administration of the affairs of civil government by

military authority for the city of Manila and the Philippine islands was created and established. The jurisdiction of this military government was extended as rapidly as the success of the American forces and the exigencies of the military situation permitted. This military government was extended to and established in the city of Iloilo as soon as it was taken possession of by the United States forces. These military governments continued in force until July 4, 1902.

XIII.

The state of war in the Philippine islands above described was recognized and proclaimed by the executive officers of the United States at various times, for example:

President McKinley directed, on March 2, 1901, under the Spooner amendment (31 Stat. L., 910), that "power to govern the Philippines shall remain in the persons now exercising the same under the military government of said islands."

In a report dated March 18, 1901, in regard to the legality of an order for the deportation of George T. Rice to the United States, the War Department referred to a state of war then existing in the Philippines.

In a report dated May 3, 1901, the War Department referred to the insurrection in the Philippines as initiated by the battle of Manila on February 4, 1899, and as bringing on a state of war, which continued since then.

Secretary of War Root, in December, 1901, in passing upon the claim of Lieut. Horton W. Stickel, Corps of Engineers, for personal property thrown overboard from a transport in the Philippines, said: "The insurrection in the Philippines against the sovereignty of the United States and the authority of the government of the Philippine islands is of such a character and extent as requires the United States to
27 prosecute its rights by military force, and therefore creates a condition of war in said archipelago."

The military government, which on December 21, 1898, President McKinley ordered to be extended from Manila city, bay, and harbor to the whole of the ceded Philippine islands, was continued by the President during the existence of the insurrection in those islands; and the military officers, who were given the direction of said military government by order and authority of the President, put into force and execution various orders relating to the collection of internal revenue and of customs duties as acts of military necessity and according to the rules of war, including the continuance in force and the execution of an executive order published by the Secretary of War, by direction of the President, on the 13th day of July, 1898, providing for the levy and collection of import and export duties upon articles imported into and exported from the Philippine islands, which order was promulgated as a war measure incident to the then existing war with Spain.

XIV.

The existence of a state of war in the Philippine islands, from the time of the declaration of war by the Filipino insurgents, on February 4, 1899, and the commencement of the armed hostilities of the insurgents, on the same day, was recognized by the Congress of the United States, and the action of the Executive in establishing a military government in the Philippine islands and enforcing various war measures incident to that government, was recognized, ratified, and sanctioned by the Congress of the United States in various enactments.

Conclusion of Law.

On the foregoing findings of fact the court decides as a conclusion of law that the plaintiff can not recover, and that its petition be dismissed.

V.—Opinion.

WRIGHT, J., delivered the opinion of the court:

Plaintiff is a corporation organized under the laws of Great Britain and is a subject of that kingdom, and was, during the war between Spain and the United States, and the latter Government with the Filipinos, engaged as a general commission mercantile trading house in the port of Manila and other ports in the Philippine islands, and as a part of its business imported goods of various kinds from the United States, the growth, produce, or manufacture of the several States of the Union. As a result of the war with Spain the port of Manila passed to the control of the military authority of the United States, and by the exchange of ratifications of the treaty by the two governments concerned, April 11, 1899, the sovereignty possessed by the Kingdom of Spain in the Philippine islands was transferred to and accepted by the United States.

Previous to, at the time of, and after the treaty of peace there existed in the said islands an organized, armed insurrection against the lawful authorities therein, and on the 4th day of February, 1899, the organized military forces of the Filipinos, headed by Aguinaldo, began war against the United States forces in the Philippine islands, which continued
28 until July 4, 1902. At the time the war began the organized military force of the Filipinos was between 50,000 and 60,000, which force was kept recruited more or less effectively during the period of the war, and during the same period of time the United States had called into action troops to the total number of 126,468 to operate against the insurgent forces. During this war the total number of engagements was 2,744. The number of deaths from all causes among the troops of the United States during the war was 4,374, and 3,022 were wounded in action.

During the war with Spain the military authorities of the United States imposed certain tariff duties and taxes upon importations into the ports of the Philippine islands in possession of such military

authorities, and ordered the same to be levied and collected as a military contribution, which was accordingly done, and these levies and collections were by the same authority continued throughout the war with the Filipinos, until Congress, by appropriate legisla*l*ation, substituted their will for that of the military government. The revenues thus derived went into the custody of the military commander, and were applied by him toward paying the expenses of the then existing military government, and in the prosecution of the war against the insurgents. None of the revenues so levied and collected were ever paid into the Treasury of the United States, nor were they subject to the jurisdiction or order of any officer of the Treasury Department.

By this suit plaintiff seeks to recover of the defendant so much of the tariff duties as were levied and collected from it between the date of signing the treaty of peace between Spain and the United States and the exchange of ratifications thereof April 11, 1899, and for all so collected after the latter date until November 15, 1901.

Certain preliminary questions have been made by the defense herein, such as (1) the plaintiff's incapacity to sue in this court by reason of alienage to Great Britain in consequence of its corporate existence instead of being a natural person; and (2) the action is one sounding in tort, and of which we have no jurisdiction.

In respect to the first objection we are satisfied to determine it against the Government's contention on the principle that it has been frequently held, that for the purposes of jurisdiction a corporation is a citizen of the State in which its corporate capacity was endowed with existence, and by extending this qualification to the plaintiff we perceive no reason why it should not be regarded as a citizen or subject of Great Britain, thus enabling it to maintain this suit in view of the comity existing between the governments of the United States and Great Britain.

In respect to the second objection before noted, we think the decision in Dooley *v.* United States (182 U. S., 222), disposes of it favorably to the jurisdiction of this court.

We are now brought to consider the important question in issue upon which our judgment is invited, namely, whether exaction of the tariffs on importations by the plaintiff from the United States into the port of Manila, which were levied and collected by the military authorities, can be sustained. If such exaction was in a time of peace in the Philippine islands, when the civil law prevailed, or could be enforced by the civil authorities, and after the exchange of ratifications of the treaty of peace between the United States and Spain, it is not denied that under the authority of the insular cases, so called, the collection was illegal
29 for the reason that the United States was not a foreign country with respect to said islands within the meaning of the tariff laws of the United States.

The case then clears itself to the single question: If a state of war existed in the Philippine islands did that *ipso facto* justify the exaction of the tariffs that were collected? That such war did exist

before and after the exchange of ratifications of the treaty with an armed military power in said islands is beyond dispute, and whether such war was declared or recognized in a particular manner or not it seems to us is but to beg the question. All men must be held to intellectual honesty to see and know the things that are plainly given them to see and know. We have already shown that an organized armed military force of over 50,000 men was opposed to and contesting with the United States the right of sovereignty in said islands, the treaty with Spain to the contrary notwithstanding. To overcome this armed force the United States employed 126,468 of its military forces in 2,744 separate engagements; lost 4,374 of its soldiers by death from all causes, and 3,022 were wounded in action. Important belligerent rights were conceded to the insurgent forces, and the laws of war were applied to intercourse between them and the United States military forces. Their soldiers, when captured, were treated as prisoners of war, and not held for treason; and, generally, all things were done as if the war had been a public one with a foreign nation. If these facts do not prove the existence of a state of war, then they are futile for every purpose. Moreover, a sufficient statement for this purpose is that the President and the Congress did once and again recognize a condition of war in the archipelago, and applied to it the usual measures incident to the treatment of a public war, and did thus invoke all the military power and authority vested in the Government in the prosecution of such war.

A war thus recognized and prosecuted ought forever to set at rest the fact of its existence, and the acts of the legislative and executive authorities in that respect, subject to judicial notice, should be equally as binding upon the judicial department of the Government as upon the legislative and executive. Any decision to the contrary would have no effect except in the case in which it might be made, because the fact could not be so changed, and will exist in history as a fact for all future time.

The question of war is one to be determined by the political department of the Government. The *Protector* (12 Wall., 700), where the court, among other things, said: "Acts of hostility by the insurgents occurred at periods so various and of such different degrees of importance and in parts of the country so remote from each other, both at the commencement and the close of the civil war, that it would be difficult, if not impossible, to say on what precise day it began or terminated. It is necessary, therefore, to refer to some public act of the political departments of the Government to fix the dates; and, for obvious reasons, those of the executive department which may be and, in fact, was, at the commencement of the hostilities, obliged to act during the recess of Congress, must be taken." (Williams *v.* Suffolk Ins. Co., 13 Pet., 415, 420; cited in Thomas *v.* U. S., 39 C. C., —.)

At the time the ratifications of the treaty of peace were exchanged, the treaty had thereafter the force of law, but by reason of the war

existing in the islands at the time, it failed to become effective, and it, as well as all other merely civil law, was suspended and superseded by military law, until such time as it might be possible to put the treaty and civil law in force, and establish proper administrative and judicial authorities to administer and enforce the same. The vital point is that until the military forces of the United States had suppressed armed resistance against its authority and established its sovereignty in the islands, the Government could not give the effect to the treaty contemplated by the high contracting parties. The case of Dooley, *supra*, and other insular cases, are not inconsistent with this view.

If the court had in mind the facts disclosed by this record, it could hardly have made a more pertinent exception than it did in the Dooley case, where it was said: "His (military commander's) power to administer would be absolute, but his power to legislate would not be without certain restrictions; in other words, they would not extend beyond the necessities of the case." No war existed in Porto Rico, into which the importation had been made, forming the subject of the Dooley case, nor had war existed there at any time. While the government there was for the time being in the military commander from the necessities of the case, yet he was not called upon to exercise the miltary authority incident to a state of war, nor did the necessities of the case demand the exercise of such power.

In time of war, within the military district of its operation, no restrictions are placed upon the power and authority of the military commander, except such as are imposed by the common consent of all civilized people. His power is absolute within the radius of his jurisdiction. He may prohibit or restrict all trade or commerce within his lines. As a condition to commerce within his military district he may impose contribution to assist in the expenses of the war or in giving such care to indigent noncombatants as humanity may require. These principles are, it seems to us, elementary and have their existence in long established and universal usage. They pervade the pages of history. Authorities are unnecessary to prove their existence, but recognition has been given them in Matthews *v.* McStea (91 U. S., 9); Prize cases (2 Black, 635); Hamilton *v.* Dillin (21 Wall., 73).

The tariffs paid by the plaintiff were not levied or collected by virtue of the general statutes of the United States relative to customs, nor by authority of any general law, nor in the exercise of the civil powers of the Government, the latter never having been in force in consequence of the prevailing war throughout said islands; but such tariffs were collected solely as a military contribution, exacted by the military government, and as a condition annexed to the privilege of importing goods upon which the duties were levied, and this is distinguishable from Diamond Rings (183 U. S., 176), where the question was as to the enforcement of the statute at Chicago, Ill., against property taken there from Luzon.

So far as appears from the evidence, the privilege of sailing away with its goods was not prohibited to the plaintiff, and while it does appear it was prohibited from landing the goods without first making payment of the duties, this does not deprive such payment of the nature of being voluntary. Plaintiff knew, or must be held as knowing, the military conditions that existed at the port to which it had sailed, and doubtless it made the importation in the expectation of having to pay the duties that were paid by it. The money was not covered into the Treasury
31 of the United States, but was applied by the military government toward its own expenses, in prosecuting the war against the enemies of the United States, and, so far as appears, the plaintiff acquiesced both in the payment and such use of the money.

We nave expressed no opinion concerning the effect of the ratification by Congress, so much discussed on the trial, of the acts of the commander in chief, deeming the question immaterial to the issue involved. In time of war the commander in chief has the same powers as other civilized governments, and the exercise of them needed no ratification to give them effective force.

Congress, however, by the act approved July 1, 1902 (32 Stat. L., 691), did provide as follows:

"SEC. 2. That the action of the President of the United States heretofore taken by virtue of the authority vested in him as commander in chief of the army and navy, as set forth in his order of July twelfth, eighteen hundred and ninety-eight, whereby a tariff of duties and taxes as set forth by said order was to be levied and collected at all ports and places in the Philippine islands upon passing into the occupation and possession of the forces of the United States, together with the subsequent amendments of said order, are hereby approved, ratified, and confirmed, and the actions of the authorities of the government of the Philippine islands, taken in accordance with the provisions of said order and subsequent amendments, are hereby approved: *Provided*, That nothing contained in this section shall be held to amend or repeal an act entitled 'An act temporarily to provide revenue for the Philippine islands and for other purposes,' approved March eighth, nineteen hundred and two.

"SEC. 3. That the President of the United States, during such time as and whenever the sovereignty and authority of the United States encounter armed resistance in the Philippine islands, until otherwise provided by Congress, shall continue to regulate and control commercial intercourse with and within said islands by such general rules and regulations as he, in his discretion, may deem most conducive to the public interests and the general welfare."

It follows, from the views we have expressed, that in our opinion the petition should be dismissed, and the judgment of the court is that it be done accordingly.

Nott, Chief Justice, and Howry, J., did not sit, and took no part in the decision of the case.

32 VI.—Judgment of the Court.

WARNER, BARNES & COMPANY, LIMITED,
v.
THE UNITED STATES. } No. 22757.

At a Court of Claims held at the city of Washington on the 5th day of May 1904, judgment was ordered to be entered as follows:

The court on due consideration of the premises find for the defendants and do order, adjudge and decree, that the petition of the claimants, Warner, Barnes & Company, Limited, be and the same is hereby dismissed.

BY THE COURT.

33 VII.—Claimant's Motion for Additional Findings of Fact and Affidavit, Filed May 18, 1904, and Order of Court Overruling Same, December 5, 1904.

Now comes the claimant, Warner, Barnes & Company, Limited, by Henry M. Ward, its attorney, and moves the court that the findings of fact filed herein on the fifth day of May, 1904 be amended and supplemented by finding the requests to find heretofore submitted by the claimant, and numbered ninth, tenth, twelfth, thirteenth, sixteenth, seventeenth, eighteenth, nineteenth, twentieth, twenty-first and twenty-second, pursuant to the affidavit of Henry M. Ward, verified May 16, 1904 and herewith submitted, and for such other or further order or relief as may be just and proper.

Dated May 16th, 1904.

HENRY M. WARD,
Attorney of Record for Claimant,
32 Nassau Street, New York City, New York.

To the honorable justices of the Court of Claims and the Honorable Louis A. Pradt, Assistant Attorney-General.

34 STATE OF NEW YORK, }
County of New York, } *ss:*

Henry M. Ward, being duly sworn, deposes and says:

I am counsel for the claimant in this suit. The claimant submitted twenty-two requests for findings of fact of which the defendant assented to and the court found the first, second, third, fourth, eleventh, fourteenth and fifteenth. The defendant also assented to the claimant's twelfth and thirteenth findings of fact, but the court embodied a portion of the claimant's twelfth request in its eight-finding and failed to find the claimant's thirteenth request. These two requests of the claimant and the eighth finding of the court are as follows:

"Twelfth. Upon the arrival of such articles of merchandise at "said port of Manila the military officer of the United States then "acting as collector of customs at that port and his military subor-

"dinates took possession of such articles and placed them under military "guard in the manner prescribed in said tariff and regulations, and pro- "ceeded to assess and levy customs duties thereon at the rates thereby "established, and refused to deliver possession thereof until after the "payment of such duties, and threatened in the event of default in such "payment to seize and sell such goods with the military forces at their "command for the payment of the duties, all in conformity with the "provisions of said customs tariff and regulations relating to similar "articles imported into the Philippines from foreign countries.

"Thirteenth. Said firm of Warner, Barnes & Company, and the "claimant during said respective periods were obliged to pay the amount "of such duties to the military collector in order to obtain possession of "said articles."

35 Eighth finding by the court:

"Upon the arrival of vessels at the port of Manila containing "such articles of merchandise the military officer of the United States, "then acting as collector of customs at that port, placed said vessels "under military guard until they should be duly discharged, and no "delivery of imported merchandise from such vessels was permitted to "be made in said port of Manila to the importer until the duties assessed "thereon had been duly paid. The said collector, upon the arrival of "vessels containing such imported merchandise, preliminary to the "assessment and payment of customs duties thereon, required the "importer to enter said merchandise for payment of duty at the custom "house within ninety days after importation. In this case it appears "these regulations were conformed to."

With respect to the twenty-first of claimant's requests which reads:

"Twenty-first. At any time during said period a column of three "thousand United States troops could have marched throughout the "island of Luzon without encountering any effective opposition."

The defendant stated as follows:

"The twenty-first of claimant's requests for findings of fact is not "objected to except that there should be added thereto: 'But the Fili- "'pino government nevertheless had sway throughout Luzon.'"

The defendant did not state whether it assented or objected to the claimant's twenty-second finding, which reads as follows:

"Twenty-second. Manila was never in the possession of the insurgents."

We submit that it is material to the issue.

Neither the 21st nor 22nd request was found by the court.

36 Of the remaining request for findings made by the claimant, we respectfully ask that the ninth request be found as submitted. This request embodies the material and relevant portions of the executive order of July 12th, 1898 under which the customs duties in suit were collected. The defendant objected to this request and to many others "on the ground that portions of the

same are not proven or are immaterial and that the material portions of the same are embodied in the defendant's request for findings of fact."

The Government embodied the enacting portion of the order in its fifth request which was found by the court, but the portion of the order which contains the regulations for the enforcement of the duties is material to the claimant's case, and we respectfully submit that the claimant is entitled to this finding in order that the issues of fact and law may be properly presented on an appeal. The portion of the request which the court did not pass upon, is as follows (after setting forth the enacting portion of the order):

"Upon the occupation of any ports or places in the Philippine islands "by the forces of the United States, the foregoing order will be proclaimed "and enforced.

"R. A. ALGER,
"Secretary of War."

"Regulations for the guidance of officers concerned in the collection of "duties on imports and exports, taxes and other charges and exactions "to be levied and collected as a military contribution at ports or "places in the possession of or under the control of the forces of the "United States in the Philippine islands.

"Every vessel shall be placed under a military guard until duly dis- "charged. * * * No delivery of imported merchandise shall be "made to the importer unless he shall have duly paid in cash the duties "assessed thereon.

"Coastwise cargoes shall be subject to duties the same as if coming "from a foreign port, except as to the trade between ports in the posses- "sion of the United States. * * *

37 "Any goods, wares or merchandise not duly entered for pay- "ment of duty within ninety days after importation shall be sold "at auction by order of the commandant after five days' public notice."

The schedules follow, and then this order closes:

"The foregoing schedules and provisions based upon the tariff and "taxing laws heretofore in operation in the Philippine islands, including "such other taxes and exactions heretofore collected, as in the discretion- "ary judgment of the commanding general shall be considered proper "and necessary, shall be and remain in force until duly modified, sus- "pended or revoked."

"At all times from November 10, 1898, to November 15, 1901, the "said tariff and regulations were enforced at the various ports of entry "in the Philippine islands, and more particularly at the said last port of "Manila, in the island of Luzon."

The claimant also submitted the following request which we submit is relevant to the issue:

"Tenth. During all of said period import duties were collected "under the alleged authority of said orders and of said tariff by the

"military authorities of the United States upon articles, the growth and "produce of the several States, brought into the several ports of entry in "the Philippine islands from the ports in the several States and Territo- "ries of the United States, as well as upon like articles imported from "foreign countries."

This was included under the general objection made by the defendant to the ninth request and others as above stated, but as this finding is not included in any of the facts found by the court we respectfully ask that it be found.

The sixteenth, seventeenth, eighteenth and nineteenth requests of the claimant are all material and relevant and while covered by the general objection of the defendant we submit that they should be found as undisputed facts. They are as follows:

38 "Sixteenth. The total amount of duties so collected was paid "over by said military collectors to the United States, and no "part thereof has ever been refunded to the said firm of Warner, Barnes "& Company, Limited, or to the claimant."

"Seventeenth. The government of Great Britain by the act of 23, 24 "Victoria, July 3, 1860, accords to citizens of the United States the "right to prosecute suits against the government, and in such suits "judgment may be recovered according to the nature and extent of the "relief to which the suitor is entitled at law or in equity.

"Eighteenth. During all the period from December 10, 1898, till "November 15, 1901, the port of Manila was open to the commerce of "all the world.

"Nineteenth. During said period the United States Government "encouraged and fostered commerce between Manila and the ports in "the States of the United States."

Of the remaining requests by the claimant, the fifth, sixth, seventh and eighth appear to be included in the requests submitted by the defendant and found by the court, but we respectfully submit that as each of these requests embodies a material and relevant fact, stated in concise form they should be allowed by the court.

All of which is respectfully submitted.

HENRY M. WARD.

Sworn to before me, this 16th day of May, 1904.

RALPH KIRBY,
[SEAL.] Notary Public, Nassau County.

Certificate filed in New York county.

Overruled.

December 5, 1904.

BY THE COURT.

39 VIII.—Claimant's Application for and Allowance of Appeal.

Now comes the claimant by its attorney and makes application for the allowance of an appeal to the Supreme Court of the United States from the judgment of this court entered and filed herein on the 5th day of May, 1904.

HENRY M. WARD,
Attorney for Claimant,
32 Nassau Street, New York City.

Filed July 21, 1904.

On the 15th day of December, 1904, the aforesaid application for allowance of appeal, filed July 21, 1904, was presented to the court by the attorney for claimants, and it was ordered that the appeal be allowed as prayed for.

BY THE COURT.

40 Court of Claims.

WARNER, BARNES & COMPANY, LIMITED,
vs.
THE UNITED STATES. } No. 22757.

I, John Randolph, assistant clerk of the Court of Claims, hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause; of the findings of fact and conclusions of law filed by the court; of the opinion of the court; of the judgment of the court; of the motion of the claimants for additional findings of fact, and order overruling same; of the application for, and the allowance of, appeal to the Supreme Court of the United States.

In testimony whereof I have *have* hereunto set my hand and affixed the seal of said court this 16 day of December, 1904.

[Seal Court of Claims.]

JOHN RANDOLPH,
Ass't Clerk, Court of Claims.

Endorsed on cover: File No. 19,566. Court of Claims. Term No. 466. Warner, Barnes and Company (Limited), appellant, *vs.* The United States. Filed December 17, 1904. File No. 19,566.

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